IN THE HIGH COURT OF JUDICATURE AT BILASPUR

MISC. APPEAL NO. 536 OF 2006 Single Bench

APPELLANT:
(Defendant)

Reliance Infocom Limited, a company duly incorporated under the relevant provisions of Companies Act, 1956, having its Head Office at Block No.-GF-1, Village Meghpar Padana, Taluka Lalpur, District Jamnagar (Gujarat) 369 280 and inter-alia amongst other offices a Office at Millennium Plaza, Behind Indian Coffee House, Raipur (C.G.)

R.R. No. 1157 Presented by Shri Nagendra Nigam dated 21/9/06

VS

RESPONDENTS:
(Plaintiffs)

1. Master Sunny, aged about 10 years, son of Kartikram Yadav, minor.
2. Master Bobby, aged about 8 years, son of Kartikram Yadav, Minor.

Both Minors through their natural guardian father Shri Kartikram Yadav, aged about 36 years, son of Bistham Yadav, resident of Ward No.11, Near Mahamai Talab, Mahasamund.

(2) (4)

3. Master Gopi, aged about 10 years, son of Punuram Yadav, Minor through his natural guardian father Shri Punuram Yadav, aged 40 years, son of Ramadhi Yadav, resident of Ward No.10, Near Maldhakka, Dr. Zakir Hussain Ward, Mahasamund.

APPEAL UNDER ORDER 43 RULE 1(r) OF THE CODE OF CIVIL PROCEDURE, 1908

(99)

HIGH COURT OF CHHATTISGARH AT BILASPUR

S.B. : HON'BLE SHRI JUSTICE DHIRENDRA MISHRA

MISCELLANEOUS APPEAL NO.536 OF 2006

Reliance Infocom Limited

versus

Master Sunny and others

ORDER

Post for 12-6-2006

Sd/-
Dhirendra Mishra
Judge

(100)

HIGH COURT OF CHHATTISGARH AT BILASPUR

S.B. : HON'BLE SHRI JUSTICE DHIRENDRA MISHRA

MISCELLANEOUS APPEAL NO.536 OF 2006

APPELLANT (Defendant) : Reliance Infocom Limited

versus

RESPONDENTS (Plaintiffs) : Master Sunny and others

Present : Mr. B.P.Sharma, counsel for the appellant.
Mr. R.S.Marhas, counsel with Shri R.K.Agrawal, Advocate for the respondents.

ORDER

(Passed on 12-6-2006)

The appellant has preferred this miscellaneous civil appeal under Order 43 Rule 1 (r) of the Code of Civil Procedure against the order dated 30-3-2006 passed by learned Ist Additional District Judge, Mahasamund in Civil Suit No.1-A/2006, by which the application under Order 39 Rules 1 and 2 of the Code of Civil Procedure preferred by the respondents – plaintiffs has been allowed and the application for temporary injunction preferred by the appellant – defendant has been rejected.

(101)

2. Hereinafter, the parties shall be referred to as per the description before the trial Court.

3. Originally, Kartikram Yadav and Punuram Yadav filed a suit for perpetual injunction and declaration that the sale-deed executed by Ashok Kumar and Rajkumar Manglani in favour of the defendant and subsequent rectification-deed of the above sale-deed be declared illegal and void. However, after hearing the arguments of the parties on 29-3-2006, the matter was posted for order for 30-3-2006. Before the order could be passed, an application for amendment in the plaint along with four documents was filed by the plaintiffs and the same was allowed by the learned Additional District Judge on the ground that the local counsel appearing on behalf of the defendant did not object the above application. By the above application, the names of the present plaintiffs were substituted in place of the original plaintiffs.

4. The plaintiffs filed the above civil suit with the pleading that they are the residents of Mahasamund. Their children, i.e., the present plaintiffs are students of Primary School, Ganjpara. The defendant purchased the suit land bearing Khasra No.1205/2 area 4109 Sq.Ft. through registered sale-deed dated 23-10-2004 from its recorded owner Ashok Kumar and Rajkumar Manglani. Subsequently, a correction-deed dated 8-7-2005 was got registered and as per the said correction, the description of the land was given as

Khasra No.1205/1 area 3780 Sq.Ft. After purchasing the land, the defendant is erecting a tower. However, the tower is being erected over Khasra No.1198 and 1199, which is away from the land purchased by the defendant and as such the defendant has no legal right to erect the said tower and its status is that of trespasser. The land in question, where the tower is being erected, is used by the students of the Primary School, Ganjpara as a playground and it is centrally situated in the town. The vendors of the defendant had no transferable right or title over the suit land and, therefore, the sale-deed executed by the said Ashok Kumar and Rajkumar Manglani in favour of the defendant and subsequent correction-deed be declared illegal and void and a decree of perpetual injunction be passed against the defendant restraining it from erecting the tower over the suit land. The plaintiffs also filed an application for temporary injunction and an application for exemption from paying Court-Fees. After filing the suit, the plaintiffs prayed for time for filing certain documents in support of their application for exemption from payment of Court-Fees. The Court, ultimately, after hearing the plaintiffs, called for a report from the Collector, Mahasamund on this application. Since no report was submitted by the Collector, the application for exemption from payment of Court-Fees was allowed and a notice was directed to be issued to the defendant.

(103)

5. The defendant appeared before the trial Court and filed various applications including the application for temporary injunction against the plaintiffs praying for restraining the plaintiffs from interfering with the possession of the defendant. The case of the defendant before the trial Court was that the civil suit filed on behalf of the plaintiffs is not maintainable, as the suit in the present form relates to public nuisances and other wrongful acts affecting the public and as per Section 91 of the Code of Civil Procedure, it may be instituted either by the Advocate General or with the leave of the Court. Since no leave has been prayed for, the suit is not maintainable and the same is liable to be dismissed at the outset. No Court-Fees has been paid and the application for exemption from payment of Court-Fees has been allowed without conducting any enquiry. The plaintiffs have prayed for cancellation of the registered sale-deed in favour of the defendant. However, they were neither parties to the said instrument nor they have any right under the said document and, therefore, they could not seek cancellation of the sale-deed. It was also submitted that before filing the civil suit, a writ petition bearing No.5802/2005 was filed by one Tejprakash Chandrakar for the similar relief and the same was dismissed vide order dated 30-01-2006 and the instant civil suit has been filed at the instance of the said writ petitioners or some busybody. The suit is also not maintainable for non-joinder of the necessary parties as the executants of the sale-deed have not been arrayed as defendants in the said suit. Apart from the

above preliminary objection, the defendant has submitted that it has purchased the piece of land through registered sale-deed for a consideration of Rs.8,22,000/- (Rupees Eight Lakhs Twenty Two Thousand) from its recorded owners, who, in turn, had purchased the same from one Kapil Narayan vide sale-deed dated 24-4-1991. However, subsequently, when it learnt that the khasra number of the land, which it has purchased, has been wrongly mentioned, it applied for correction of the sale-deed. On its application, the document was sent for investigation to the Inspector General (Registration) and, who, after enquiry, vide his order dated 7-7-2005, ordered for registration of the correction-deed. Revenue Authorities prepared Panchnama and Nazari-Naksha in presence of senior revenue officers of the District and from perusal of the Panchnama and Nazari-Naksha, it would be evident that the defendant is in possession of the suit land. It is further submitted that before erecting the tower over the land in question, the necessary approval was obtained from the Municipal Authorities.

6. The Court below, after hearing the parties on their applications for temporary injunction, allowed the application for temporary injunction of the plaintiffs and dismissed the application of the defendant by recording a finding on the basis of original map of 1951-52, which is filed with the plaint, that the second demarcation dated 2-7-2005 is not in accordance with law and the position of the

land bearing Khasra No.1205/1 cannot be situated as per demarcation in the pink colour of Annexure A-1 and the land in question is a Government land and the Revenue Authorities are deliberately describing the same as the land belonging to the defendant. Since the land in question is being used as a playground by the students of the Primary School, Ganjpara and it is also used for religious purposes, therefore, if the defendant is permitted to erect the tower over the Government land, in that case, public at large shall suffer inconvenience, whereas the defendant can purchase a suitable land in the outskirts of Mahasamund and do its business and no irreparable injury is likely to cause to the defendant, and on the above finding, the application for temporary injunction on behalf of the plaintiffs has been allowed and the defendant has been restrained from undertaking any construction over the suit land till the disposal of the suit and accordingly the application for temporary injunction on behalf of the defendant has been rejected.

7. Learned counsel for the appellant – defendant submits that in order to provide cellular phone facilities to the public at large in Mahasamund, the land in question was duly purchased by the defendant from its recorded owners after paying valuable consideration. The defendant has already commenced erection of the tower and because of the impugned order, it is suffering irreparable loss. On the other hand, the plaintiffs have no *locus standi* to file the

instant suit. The suit, in present form, is not maintainable. The application for amendment of the plaint was allowed behind the back of the plaintiffs, as no concession, as mentioned in the order-sheet dated 30-3-2006, was given by the counsel for the defendant for allowing the application for amendment of the plaint, and by the said amendment, the original plaintiffs have been substituted by the present minor plaintiffs and the names of the original plaintiffs have been deleted. It is further submitted that the defendant had also filed an application for temporary injunction against the original plaintiffs, and in view of the application for temporary injunction on behalf of the defendant, the names of the original plaintiffs cannot be deleted.

8. On the other hand, learned counsel for the respondents – plaintiffs, supporting the order of the temporary injunction passed in favour of the plaintiffs, submits that the names of the plaintiffs were substituted after the application for amendment in this regard was allowed, as it was not opposed by the defendant and, therefore, the defendant is now estopped from challenging the above order at this stage. It is further submitted that the defendant is a renowned and influential company. The senior officers of the district administration have prepared a false demarcation report under the influence of the defendant. There is material discrepancy in the description of the suit land, as is evident from the sale-deed executed by Kapil Narayan in favour of Rajkumar Manglani and Ashok Kumar and subsequent sale-

deed executed by Rajkumar Manglani and Ashok Kumar in favour of the defendant. Khasra No.1205/1 is a Government and abadi land and as per Section 2(a) of the Chhattisgarh Land Revenue Code, an abadi land cannot be used for any other than the residential purpose and as such no tower could be erected thereon. So far as the objection regarding maintainability of the instant suit is concerned, it is submitted that procedural fault of Section 91 of the Code of Civil Procedure alone cannot disentitle the plaintiffs from filing the suit, as no prejudice has been caused to the defendant and its mere irregularity cannot come in the way of dispensation of justice.

9. I have heard learned counsel for the parties and perused the documents annexed with the memo of appeal and also the documents filed by the respondents.

10. From the pleadings of the respective parties and the documents filed by them, the dispute basically appears to be that of demarcation in question, whereas the defendant is relying upon the demarcation, Panchnama and Nazari-Naksha prepared by the Revenue Authorities in the presence of the senior revenue officers of the district, wherein the land in question is shown to be a land belonging to the defendant, which it has purchased from its erstwhile owners. The Court below, relying upon the original map of 1951-52 filed by the plaintiffs, has finally arrived at the conclusion that the suit land

cannot form part of the Khasra No.1205 and the alleged demarcation report prepared by the Revenue Authorities is false and the same has been prepared under the influence of the defendant. From perusal of the plaint itself, it is not in dispute that the defendant purchased a part of Khasra No.1205 from its erstwhile owners. The description of the land was subsequently amended by a deed of correction after due enquiry by the competent authorities. It is also not in dispute that after purchasing the land in question, when the defendant started erection of a tower, one Tejprakash Chandrakar filed a writ petition raising identical disputes and prayed for ad-interim writ, however, the writ petition itself was disposed of by the High Court by recording a finding that a factual dispute exists between the parties and the same cannot be looked into in proceeding under Article 226/227 of the Constitution of India, as the same requires recording of evidence. It is also not in dispute that after purchasing the suit land, the defendant got its name mutated and took over possession of the suit land and has started construction of a tower over the suit land. From perusal of the impugned order, it appears that the Court below, only on the basis of the documents/map filed by the respective parties, has arrived at the final conclusion that the land in question does not form part of Khasra No.1205 and the same is a Government land. The above finding has been arrived at without affording an opportunity of leading evidence to the respective parties and the same cannot be upheld. The defendant has raised serious objection with respect to the

maintainability of the suit, which requires consideration. Thus, in the light of the admitted fact that the defendant, after purchasing the land in question from its recorded owners, has entered into possession and has started construction of a tower over the suit land, the finding of the trial Court that the plaintiffs have a *prima facie* case, cannot be upheld. Since the construction was already commenced, therefore, if the defendant is obstructed from further undertaking construction, irreparable injury to the defendant cannot be ruled-out. On the other hand, ultimately, if it is found that the suit in question is maintainable and it is decreed, in that case, the defendant may be directed to remove the construction over the suit land and restore the suit land to its original condition, and thus, no irreparable loss is likely to cause to the plaintiffs.

11. In the result, the appeal is allowed. The impugned order of temporary injunction passed by the Court below in favour of the plaintiffs, restraining the defendant and its employees, labourers from undertaking any construction over the land marked as pink portion of the map of Annexure A-1 is hereby set aside and the application for temporary injunction of the plaintiffs is dismissed.

Sd/-
Dhirendra Mishra
Judge

Gopal